

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ANDRE HURREY, PRO SE,	§	
A.K.A. ANDRE WILLIAM HURREY,	§	
TDCJ-CID No. 1413337,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:07-CV-0226
	§	
UNKNOWN TEXAS TECH	§	
MEDICAL PERSON "A"	§	
also known as	§	
DAVID CONTRERAS,	§	
	§	
Defendant.	§	

ORDER OF DISMISSAL

Plaintiff ANDRE HURREY, acting pro se and while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against defendants employed by or otherwise associated with the Texas Department of Criminal Justice and was granted permission to proceed *in forma pauperis*. On November 14, 2008, plaintiff's claims against defendant the STATE OF TEXAS were DISMISSED WITHOUT PREJUDICE FOR WANT OF JURISDICTION. On November 4, 2009, plaintiff's claims against defendants UNKNOWN TDCJ CORRECTIONS OFFICER "A", UNKNOWN TDJ CORRECTIONS OFFICER "B", UNKNOWN TDCJ CORRECTIONS OFFICER "C", and UNKNOWN TDCJ CORRECTIONS OFFICER "D" were DISMISSED WITH PREJUDICE AS FRIVOLOUS, WITHOUT PREJUDICE PURSUANT TO RULE 12(b)(1), FED.R.CIV.PRO., AND FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

On September 15, 2010, a Report and Recommendation was issued by the United States Magistrate Judge recommending the Civil Rights Claims for monetary relief by plaintiff ANDRE HURREY, also known as ANDRE WILLIAM HURREY, pursuant to Title 42, United States Code, section 1983 against defendant UNKNOWN TEXAS TECH MEDICAL PERSON “A”, also known as DAVID CONTRERAS, IN HIS OFFICIAL CAPACITY be DISMISSED WITHOUT PREJUDICE PURSUANT TO RULE 12(b)(1); plaintiff’s claim against defendant CONTRERAS IN HIS INDIVIDUAL CAPACITY FOR CRIMINAL CHARGES BE DISMISSED WITH PREJUDICE AS FRIVOLOUS; and his claim against defendant CONTRERAS IN HIS INDIVIDUAL CAPACITY FOR EMPLOYMENT TERMINATION be DISMISSED WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

The Magistrate Judge further recommended that pursuant to Federal Rule of Civil Procedure 56(c), defendants have shown there is no material issue of fact and that they are entitled to judgment on the issues of exhaustion, failure to state a claim, and qualified immunity. Therefore, the Magistrate Judge recommended dismissal of plaintiff’s remaining claims against defendant CONTRERAS IN HIS INDIVIDUAL CAPACITY AS BARRED BY FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE FILING SUIT IN FEDERAL COURT, TITLE 42, UNITED STATES CODE, SECTION 1997e(a), THAT PLAINTIFF HAS FAILED TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED, AND, IN ANY EVENT, DEFENDANT CONTRERAS IS ENTITLED TO QUALIFIED IMMUNITY FROM THOSE CLAIMS. Federal Rules of Civil Procedure 56(c).

The period for response has expired, and no objections have been filed by plaintiff.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation. The Court is of the opinion that the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge in this case.

IT IS THEREFORE ORDERED that the Civil Rights Complaint by plaintiff ANDRE HURREY against defendant UNKNOWN TEXAS TECH MEDICAL PERSON "A", also known as DAVID CONTRERAS, IN HIS OFFICIAL CAPACITY are DISMISSED WITHOUT PREJUDICE PURSUANT TO RULE 12(b)(1); plaintiff's claim against defendant CONTRERAS IN HIS INDIVIDUAL CAPACITY FOR CRIMINAL CHARGES are DISMISSED WITH PREJUDICE AS FRIVOLOUS; and his claim against defendant CONTRERAS IN HIS INDIVIDUAL CAPACITY FOR EMPLOYMENT TERMINATION are DISMISSED WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

As to plaintiff's remaining claims, pursuant to Federal Rule of Civil Procedure 56(c), the Court finds defendants have shown there is no material issue of fact and they are entitled to judgment as a matter of law on the issues of exhaustion, failure to state a claim and qualified immunity. Therefore, PLAINTIFF'S REMAINING CLAIMS AGAINST DEFENDANT CONTRERAS IN HIS INDIVIDUAL CAPACITY ARE DISMISSED AS BARRED BY FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE FILING SUIT IN FEDERAL COURT, TITLE 42, UNITED STATES CODE, SECTION 1997e(a), FOR

FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED, AND, IN ANY EVENT, DEFENDANT CONTRERAS IS ENTITLED TO QUALIFIED IMMUNITY. Federal Rules of Civil Procedure 56(c).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Any pending motions are DENIED.

The Clerk shall send a copy of this Order to plaintiff and to any attorney of record.

It is SO ORDERED.

Signed this the 5th day of October, 2010.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
United States District Judge